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09/800,006	03/06/2001	James C. Rush	STE01 P-1086	5256

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 06/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/800,006

Applicant(s)  
JAMES C. RUSH ET AL.

Examiner  
YVONNE M. HORTON

Art Unit  
3635



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 6, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-44 is/are allowed.
- 6) ☒ Claim(s) 1-3, 23-28, 45, and 46 is/are rejected.
- 7) ☒ Claim(s) 4-22, 29, and 47-50 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

Art Unit: 3635

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: the co-pending application information on the pages 1, 14 and 15 need to be completed and updated.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 28 recites the limitation "said slot at a lowermost end of said one post" in lines 6 and 7. There is insufficient antecedent basis for this limitation in the claim. Independent claim 1 has only introduced a vertically extending slot on the post. The post has not been provided with a slot at a lowermost end. Correction and clarification is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3635

6. Claims 1-3,23-26,45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,277,512 to DWILLIES. DWILLIES discloses a furniture system including a plurality of overhead beams (10,11,50), a plurality of vertical posts (12,13,30) having outwardly extending flanges (36) having an end face (32) with a vertical central slot (16,34), and a plurality of connectors (14,52). Regarding claims 2 and 46, the slot (16,34) is "T-shaped" having an enlarged interior (40) and reduced neck (38) that open outwardly. In reference to claim 3, the connectors (14,52) are inserted into the slots (16,34). Regarding claims 23,24 and 45, DWILLIES also discloses the use of an "X-post" having four outwardly extending flanges and slots, see Figure 14E; and a "Y-post" having three outwardly extending flanges and slots, see Figure 14D. In reference to claims 25 and 26, the assembly of DWILLIES also includes a hanger slots (84) and a plurality of accessories (91) having hooks (92) for insertion into hanger slots (84).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 3635

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,277,512 to DWILLIES in view of US patent #3,513,606 to JONES. As detailed in paragraph #6 above, DWILLIES discloses the basic claimed beam-to-post furniture assembly except for the use of adjustable feet. The use of adjustable feet are old and very well known in the art. JONES teaches that it is known in the art to provide a beam-to-post arrangement with an adjustable foot assembly (F), see the marked attachment. Thus, it would have been obvious to one having ordinary skill in the art to provide the assembly of DWILLIES with the adjustable foot assembly of JONES in order to provide the beam-to-post arrangement with a means to adjust to irregularities in the flooring surface and to adjust to varying heights for matters of privacy during use.

***Allowable Subject Matter***

10. Claims 4-22,29 and 47-50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claims 30-44 are allowed.

Art Unit: 3635

13. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach the use of a beam-to-post arrangement as defined by claims 1,30,35 and 45, wherein the overhead beam includes a lowermost central slot.

Eventhough beams having lower slots are old and very well known in the art, there is not motivation for providing the arrangement of DWILLIES with a lowermost slot.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909.

YMH



Primary Examiner

Art Unit 3635

June 17, 2002

